FILE COPY

Nos. 119, 120 and 121.

FILED
JUL 13 1946
CHARLES ELMORE

IN THE

Supreme Court of the United States

October Term, 1946.

COLUMBIA GAS & ELECTRIC CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA, BEN WILLIAMSON, JR., TRUSTEE OF INLAND GAS CORPORATION, RUSSELL VAN HORN, ET AL., As a Committee for Bondholders, and MORRIS GREEN.

COLUMBIA GAS & ELECTRIC CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA, BEN WILLIAMSON, JR., TRUSTEE OF KENTUCKY FUEL GAS CORPORATION, and MORRIS GREEN.

COLUMBIA GAS & ELECTRIC CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA, CLINTON M. HARBISON, TRUSTEE FOR AMERICAN FUEL AND POWER COMPANY, ET AL., and LOUIS A. GREEN, and ROBERT HEILBRUNN, As a Committee for Note Holders.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR THE RESPONDENTS THE GREEN COMMITTEE AND MORRIS GREEN IN OPPOSITION.

BAKER, OBERMEIER, ROSNER & ROSENSON,
Attorneys for Respondents Green Committee and Morris Green,
No. 285 Madison Avenue,
N. Y. City 17, New York.

OSCAR S. ROSNER,
Of Counsel.

JEROME N. WANSHEL,
On the Brief.

Lodge Appeal Press, Inc., 65-67 Duane St., N. Y. C., Tel. WOrth-2-0689

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 129.

COLUMBIA GAS & ELECTRIC CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA, BEN WILLIAMSON, JR., TRUSTEE OF INLAND GAS CORPORATION, RUSSELL VAN HORN, ET AL., as a Committee for Bondholders, and MORRIS GREEN.

No. 130.

COLUMBIA GAS & ELECTRIC CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA, BEN WILLIAMSON, JR., TRUSTEE OF KENTUCKY FUEL GAS CORPORATION, and MORRIS GREEN.

No. 131.

COLUMBIA GAS & ELECTRIC CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA, CLINTON M. HARBISON, TRUSTEE FOR AMERICAN FUEL AND POWER COMPANY, ET AL., and LOUIS A. GREEN, and ROBERT HEILBRUNN, as a Committee for Note Holders.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Brief for the Green Committee and Morris Green in Opposition.

Opinions Below.

The district court rendered no opinion but filed findings of fact and conclusions of law (R. I, 590-603[1]). The opinion of the Circuit Court of Appeals is reported in 151 F. 2d 461 (R. IX, 3-23, 46) and its opinion denying petition for rehearing is reported in 153 F. 2d 101 (R. IX, 56-57).

The opinion of this Court dismissing an appeal from the judgment of the district court is reported in 322 U. S. 379. The opinion of the Circuit Court of Appeals on an appeal taken at an earlier stage of the proceedings is reported in 122 F. 2d 223.

Jurisdiction.

The decrees of the Circuit Court of Appeals were entered on October 9, 1945; were amended on November 26, 1945, and petition for rehearing was denied on January 21, 1946 (R. IX, 1-2, 46-56). An order entered by the late Chief Justice extended petitioner's time for applying for writs of certiorari to June 1, 1946 (R. IX, 59), and the petition for writs of certiorari was filed on May 29, 1946. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Whether the equitable powers of a bankruptcy court may be exercised to subordinate claims acquired with a wrongful intent and used to the damage of the other claimants.

---

1. Since the pagination of the nine volumes of the record is not consecutive, the volume and page of the record will be designated, respectively, by Roman numerals and Arabic numerals.

Statement.

These appellees adopt the statement set forth in the Government's brief.

Argument.

I.

Petitioner contends that the court below erroneously based its decision upon a finding that Columbia had violated the anti-trust laws and the Court then applied a penalty not provided for under such laws. The decision below was not based upon the grounds stated by petitioner and the question raised is thus not presented. Although petitioner emphasizes its violation of the anti-trust laws, this is not a proceeding to enforce the Sherman Act, and the principles of law involved are governed solely by a determination of the equity powers of the bankruptcy court in adjudicating claims. The court below did not base its decision upon a violation of the anti-trust law, but rather upon the facts which resulted in such a violation, and in considering these facts properly evaluated petitioner's wrongful intent, purpose and conduct in purchasing and utilizing the securities upon which it asserted and still asserts its claims. The court imposed no penalties; it but exercised its equity power to deny relief to a creditor seeking enforcement of contracts entered into illegally and tainted with iniquity.

Hartford-Empire Co. v. *United States,* 323 U. S. 386, upon which petitioner so heavily relies, was considered by the court below and properly distinguished from the case at bar. In the *Hartford-Empire* case the Government had instituted the action and was asserting that dedication of some of Hartford's patents was necessary to eliminate the obnoxious features of the conspiracy and the abuses arising out of the illegal use of those patents. In the

Hartford-Empire decision this court reiterated its holding in *Morton Salt Co.* v. *G. S. Suppiger Co.*, 314 U. S. 488 and *B. B. Chemical Company* v. *Ellis*, 314 U. S. 495, to the effect that a patent-owner is denied enforcement of his patent rights against infringers, so long as the patent-owner is using his patent in violation of the anti-trust laws. Such patent-owners asserting claims against infringers are in a similar position to the petitioner herein.

The court below in distinguishing the *Hartford-Empire* case, *supra*, from the case at bar, stated (R. IX, 22):

> "It may well be, under the facts of the *Hartford-Empire* case, that there remained to the appellants there, property rights which, when their owners had abandoned their illegal use and been purged of inequity, could still be enforced against subsequent infringers. Such rights the court would not allow to be confiscated. This doctrine has no application to the present status of Columbia, at least in respect to the subordination of its claims by the decree. In that respect the decree merely denies enforcement of the Columbia claims precisely as the *Hartford-Empire* decision denies enforcement of patents illegally used against those infringing during such illegal use. The fruits of Columbia's inequitable activities are still retained in its freedom from competition by American Fuel, and Columbia's suggested remedy would still leave wronged stockholders and creditors without relief, for a restoration of the *status quo ante* is manifestly now impossible."

II.

Petitioner's insistence that its violation of the anti-trust laws resulted in penalties not provided for under the anti-trust statutes is completely erroneous. Although

the facts which establish petitioner's wrong-doing in both its original purchase of the bonds and its later purchase of the claims and stock were a violation of the anti-trust laws, nevertheless, assuming that there were no anti-trust laws, petitioner's wrong-doing would still have been proscribed by a court of equity. The court rightfully refused to lend its aid to a wrong-doer who was asserting claims against a bankrupt estate which, if granted, would result in the wrong-doer receiving a premium for his evil acts at the expense of the persons whom he had injured.

To support its contention that a party to an illegal combination restraining competition is not deprived of protection of his property, petitioner relies upon the District Court's opinion in *Standard Oil Co.* v. *Markham,* 61 F. Supp. 813. However, that case is one in which Standard Oil was seeking to recover patents from the Alien Property Custodian, who was asserting that the former use of the patents in violation of the anti-trust laws compelled a dedication of such patents. In the *Standard Oil* case, *supra,* the Court followed the ruling in the *Morton Salt* and *B. B. Chemical* cases, *supra,* and held:

> "* * * the *Morton Salt Co.* case stands for the proposition that so long as a patent owner is using his patent in violation of the anti-trust laws he cannot restrain infringement of it by others. In the instant case plaintiffs, whatever may have been their past conduct, are not currently using the patents here involved in violation of the anti-trust laws." (p. 815)

In the case at bar American Fuel and its subsidiaries cannot be placed in *status quo ante;* and claimants, other than petitioner, have been permanently and irretrievably damaged.

Conclusion.

The decision below is correct and should not be disturbed. There is no conflict of decision. The petition for a writ of certiorari should be denied.

BAKER, OBERMEIER, ROSNER & ROSENSON,
Attorneys for Respondents Green Committee and Morris Green,
285 Madison Avenue,
New York City 17, New York.

OSCAR S. ROSNER,
Of Counsel.

JEROME N. WANSHEL,
On the Brief.